



June 5, 2002

Mr. Ronald D. Stutes
Brown & Hofmeister
1717 Main Street, Suite 4300
Dallas, Texas 75201

OR2002-3056

Dear Mr. Stutes:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "Act"). Your request was assigned ID# 163894.

The City of Highland Village (the "city"), which you represent, received two written requests for the personnel file and reason for termination of Thomas Lee Collins. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, 552.117(2) and 552.130 of the Government Code.

Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You did not, however, submit to this office a copy of the information requested or representative samples.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public and must be released. In order to overcome the presumption that the requested information is public information, a governmental body must provide compelling reasons why the information should not be disclosed. *Id.*; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ); *see* Open Records Decision No. 630 (1994). The applicability of sections 552.101, 552.117(2) and 552.130 can provide a compelling reason for non-disclosure. Furthermore, the need of another governmental body to withhold requested information may provide a compelling reason for nondisclosure under section 552.108. Open Records Decision No. 586 (1991).

You state that “[t]he Denton County Criminal District Attorney’s Office has requested that documents related to this case not be released in order to avoid interference with the prosecution.” However, because you have not provided the responsive information to this office as required, we are unable to determine whether the prosecution constitutes a compelling reason sufficient to overcome the presumption of openness that results from the city’s failure to comply with section 552.301. Likewise, we are unable to determine the applicability of your claims under sections 552.101, 552.117(2), and 552.130. *But see* Open Records Decision No. 670 (2001) (concluding that all governmental bodies subject to the Act may withhold information that is subject to section 552.117(2) of the Government Code without the necessity of seeking a decision from this office); *see generally* Open Records Decision No. 673 (2001) (defining the two types of previous determinations issued by this office). Thus, we have no choice but to order the requested information released pursuant to section 552.302 of the Government Code. If you believe this information is confidential and therefore may not be lawfully released, you must challenge the ruling in court as outlined below.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

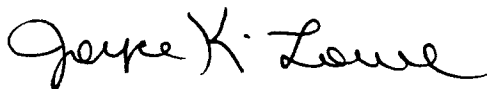
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "Joyce K. Lowe".

Joyce K. Lowe
Assistant Attorney General
Open Records Division

JKL/sdk

Ref: ID# 163894

c: Mr. Ben Tinsley
Star-Telegram
3201 Airport Freeway, Suite 108
Bedford, Texas 76021

Ms. Rachel Horton
The Dallas Morning News
131 West Main Street
Lewisville, Texas 75067